

1 TERRY ROSS, CASB No. 58171
 terry.ross@kyl.com
 2 AUDETTE PAUL MORALES, CASB No. 216631
 audette.morales@kyl.com
 3 KEESAL, YOUNG & LOGAN
 A Professional Corporation
 4 400 Oceangate, P.O. Box 1730
 Long Beach, California 90801-1730
 5 Telephone: (562) 436-2000
 Facsimile: (562) 436-7416
 6
 Attorneys for Defendants
 7 WACHOVIA SECURITIES, LLC and MARK WIELAND
 8 GILBERT R. SEROTA, CASB No. 75305
 gserota@howardrice.com
 9 HOWARD RICE NEMEROVSKI
 CANADY FALK & RABKIN
 10 A Professional Corporation
 Three Embarcadero Center, 7th Floor
 11 San Francisco, California 94111-4024
 Telephone: (415) 434-1600
 12 Facsimile: (415) 217-5910
 13 Attorneys for Defendants
 JOSEPH E. BARATTA and TBIG FINANCIAL
 14 SERVICES, INC.

15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN JOSE DIVISION
 19

20 VIOLETTA ETTARE,) Case No. C-07-04429-JW (PVT)
 21)
 Plaintiff,)
 22 vs.) **DEFENDANTS' JOINT AMENDED**
) **NOTICE OF REMOVAL OF ACTION**
 23)
 JOSEPH E. BARATTA, an individual,)
 24 TBIG FINANCIAL SERVICES, INC., form) **[28 U.S.C. §§ 1332(a), 1441(a), 1441(b)]**
 of business unknown, WACHOVIA)
 25 SECURITIES, LLC, a Delaware Limited)
 Liability Company, MARK WIELAND, an)
 26 individual, and DOES 1-25,)
)
 27 Defendants.)
)

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendants WACHOVIA SECURITIES, LLC
4 ("Wachovia"), MARK WIELAND ("Wieland"), TBIG FINANCIAL SERVICES, INC.
5 ("TBIG"), and JOSEPH E. BARATTA ("Baratta") (collectively "Defendants"), pursuant to
6 this Court's February 13, 2008 Order, submit the following Amended Notice of Removal
7 to this Court relating to the state court action described below.

8 1. Defendants were named as parties in a civil action filed on July 13,
9 2007, in the Superior Court of the State of California for the County of Santa Clara,
10 Case No. 107CV089814, entitled VIOLETTA ETTARE v. JOSEPH E. BARATTA, an
11 individual, TBIG FINANCIAL SERVICES, INC., a form of business unknown,
12 WACHOVIA SECURITIES, LLC, a Delaware Limited Liability Company, MARK
13 WIELAND, an individual, and DOES 1-25 (the "Complaint"). (A true and correct copy
14 of the Complaint is attached to the Declaration of Terry Ross in Support of Defendant's
15 Joint Amended Notice of Removal of Action ("Ross Decl."), filed concurrently herewith, at
16 ¶ 2, Exhibit "B.")

17 2. Wachovia was served with a copy of the Summons and a copy of the
18 Complaint on or about July 26, 2007. (Ross Decl., ¶ 2.)

19 3. Wieland was served with a copy of the Summons and a copy of the
20 Complaint on or about August 1, 2007. (Ross Decl., ¶ 3.)

21 4. TBIG and Baratta were served with a copy of the Summons and a
22 copy of the Complaint on or about August 3, 2007. (Ross Decl., ¶ 4 and Declaration of
23 Joseph E. Baratta in Support of Defendant's Joint Opposition to Plaintiff's Motion to
24 Remand and Motion for Leave to Amend Removal Notice ("Baratta Decl."), ¶ 9,
25 previously filed with the Court and filed concurrently herewith).

26 5. Since before the time said action was commenced on July 13, 2007,
27 and at all times thereafter, Wachovia has been a limited liability company organized
28 under the laws of Delaware, having its principal place of business in Richmond, Virginia.

1 (Ross Decl., ¶ 5; see also Declaration of Paul Waldman in Support of Defendant's Joint
2 Amended Notice of Removal of Action ("Waldman Decl."), ¶ 3, filed concurrently
3 herewith.)

4 6. Since before the time said action was commenced on July 13, 2007,
5 and at all times thereafter, Wachovia has been owned entirely by Wachovia Securities
6 Financial Holdings, LLC ("WSFH"). (Waldman Decl., ¶ 4.)

7 7. Since before the time said action was commenced on July 13, 2007,
8 and at all times thereafter, WSFH has been organized under the laws of the State of
9 Delaware in and has had its principal place of business in Richmond, Virginia.
10 (Waldman Decl., ¶ 5.)

11 8. Since before the time said action was commenced on July 13, 2007,
12 and at all times thereafter, WSFH has consisted of two members: Prudential Securities
13 Group Inc. ("PSG"), which has a 38% interest in WSFH, and Wachovia Securities
14 Holdings, LLC ("WSH"), which has a 62% interest in WSFH. (Waldman Decl., ¶ 6; see
15 also Declaration of Kenneth Meister in Support of Defendant's Joint Amended Notice of
16 Removal of Action ("Meister Decl."), ¶¶ 2, 3, filed concurrently herewith.)

17 9. Since before the time said action was commenced on July 13, 2007,
18 WSH has been organized under the laws of the State of Delaware and has had its
19 principal place of business in Charlotte, North Carolina. (Waldman Decl., ¶ 7.)

20 10. Since before the time said action was commenced on July 13, 2007,
21 PSG was and is incorporated under the laws of the State of Delaware and has had its
22 principal place of business in New York. (Meister Decl., ¶ 4.)

23 11. Since before the time said action was commenced on July 13, 2007,
24 WSH has been owned entirely by Everen Capital Corporation ("Everen"). (Waldman
25 Decl., ¶ 8.)

26 12. Since before the time said action was commenced on July 13, 2007,
27 Everen was and is incorporated under the laws of the State of Delaware and has had its
28 principal place of business in Charlotte, North Carolina. (Waldman Decl., ¶ 9.)

1 13. At the time said action was commenced and at all times thereafter,
2 Wieland was a citizen of the State of Pennsylvania. (Ross Decl., ¶ 6.)

3 14. Since before the time said action was commenced on July 13, 2007
4 and at all times thereafter, TBIG has been organized under the laws of the State of
5 Nevada, having its principal place of business in Incline Village, Nevada. (Ross Decl.,
6 ¶ 7 and Baratta Decl., ¶ 5.)

7 15. Since before the time said action was commenced on July 13, 2007
8 and at all times thereafter, Baratta was and has been a citizen of the State of Nevada.
9 (Ross Decl., ¶ 7, and Baratta Decl., ¶¶ 2-4.)

10 16. Defendants are informed and believe that Plaintiff was at all times
11 relevant hereto a citizen of the State of California and resident of Santa Clara County.
12 (Ross Decl., ¶ 8.)

13 17. Although fictitiously designated defendants (Does 1-25, inclusive)
14 are referred to in the Complaint, such fictitious defendants are to be disregarded for
15 purposes of this petition pursuant to 28 U.S.C. § 1331(a).

16 18. This action is a civil action over which this Court has original
17 jurisdiction pursuant to 28 U.S.C. § 1332(a) and is one which Defendants are entitled to
18 remove to this Court pursuant to 28 U.S.C. §§ 1441(a) and (b) in that the action is
19 between citizens of different states and the matter in controversy exceeds the sum of
20 \$75,000, exclusive of interest and costs. (Ross Decl., ¶¶ 4-9; Waldman Decl., ¶¶ 3-9;
21 Meister Decl., ¶¶ 2-4; Baratta Decl., ¶¶ 2-5.)

22 19. No further proceedings have been had in the above-referenced state
23 court action. (Ross Decl., ¶ 10.)

24 20. The original Notice of Removal was filed within 30 days from the
25 service of the Complaint on Defendants. (Ross Decl., ¶¶ 2-4 and 11; Baratta Decl., ¶ 9.)

26 21. Defendants provided the original Notice of Removal to the Clerk of
27 the Superior Court of the State of California for the County of Santa Clara on or about
28 August 27, 2007. (A true and correct copy of the original Notice of Removal is attached

1 to the Ross Decl. at ¶ 12, Exhibit "D.")

2 22. Defendants provided the Joint Amended Notice of Removal to the
3 Clerk of the Superior Court of the State of California for the County of Santa Clara on or
4 about February 28, 2008. (Ross Decl., ¶ 13.)

5 WHEREFORE, Defendants pray that the above-referenced action pending
6 in the Superior Court of the State of California for the County of Santa Clara, be
7 removed therefrom to this Court.

8
9 DATED: February 28, 2008

/s/ Terry Ross

TERRY ROSS

AUDETTE PAUL MORALES

KEESAL, YOUNG & LOGAN

Attorneys for Defendants

WACHOVIA SECURITIES, LLC and

MARK WIELAND

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13
14 DATED: February 28, 2008

/s/ Gilbert R. Serota

GILBERT R. SEROTA

HOWARD RICE NEMEROVSKI CANADY

FALK & RABKIN

Attorneys for Defendants

JOSEPH E. BARATTA and TBIG

FINANCIAL SERVICES, INC.